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**TESTIMONY IN SUPPORT OF RAISED BILLS S.B. 230**  
**(interrogations), H.B. 5273 (eyewitness identification),**  
**and, reluctantly, H.B. 5445 (death penalty)**

To: Members of the Judiciary Committee

From: Donald S. Connery, 384 Skiff Mountain Road, Kent, CT 06757. 860-927-3818.  
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Counting from 1996, this is the 15<sup>th</sup> time I have appeared before this committee on raised bills seeking reforms in Connecticut's deeply flawed criminal justice system. So far, it has been a futile exercise. I should change my name from Connery to Quixote.

This saga of frustration does not entitle me to be anything less than accurate and fair-minded in my remarks to you, but I do believe I am entitled to speak bluntly about this state's sorry history of opposing or stifling reforms in the justice system that are not only *inevitable* but already widely adopted and applied all across the country—often voluntarily by police agencies and state's attorneys who recognize their value.

I am here in support of the three raised bills under consideration because of their general thrust toward justice even if I question some details. Fortunately, Yale Professor David Cameron, who closely monitors our justice system, will testify about the particulars of each bill and has submitted a text that I strongly urge you to read. Because I agree so totally with his analysis, I am free to speak in more general terms about Connecticut's failure to be a leading force for law enforcement reforms.

The big question is: *What's wrong with us?* I will end this statement with an answer. Just consider the ugly reality that we are in competition with Alabama, Mississippi and a few other states in racing to last place in the noble effort--underway nationwide since the mid-1980s because of the DNA revolution--to make sure that only the guilty are arrested, prosecuted, convicted and sent to prison, and never the innocent.

Certainly some of our police departments and state's attorney offices do excellent work and have adopted higher standards, but, speaking generally:

- Connecticut still clings to the death penalty however useless and expensive.
- We still allow confessions, true or false, to be coerced in secret by police interrogators using high-pressure techniques of persuasion and intimidation.
- We still rely on outmoded eyewitness procedures despite knowing that faulty eyewitness testimony is the major cause of unjust convictions.
- We still elect part-time judges for our broken probate court system.

- We still tolerate police who focus blindly on the wrong suspects and lie in court.
- We still give a pass to prosecutors who conceal exculpatory evidence and present misleading testimony.
- We still look the other way as compliant judges accommodate those state's attorneys who automatically oppose every effort to overturn the convictions of obviously innocent inmates.
- And, yes, we do have an Advisory Commission on Wrongful Convictions, created by statute in 2003, but it seldom meets, does little, and is unknown to the public.

If this sounds as if I am anti-law enforcement or soft on law and order—don't believe it. I strongly support the best of our police, prosecutors and judges, but there are too many bad apples and too few safeguards to prevent lawlessness in law enforcement.

In September 1995, just a few months before my first appearance before this committee, a day-long public forum was held in Hartford to draw attention to the imprisonment of Richard Lapointe, the brain damaged and mentally limited middle-aged man who had been wrongly convicted six years earlier for the murder of his wife's grandmother. His prosecution was an atrocity—based almost solely on speculation and three nonsensical confessions obtained by the Manchester police during a harrowing nine-hour interrogation. "I killed her," said the befuddled suspect, "but I don't remember being there." The state sought the death penalty despite the paucity of evidence.

To our shame, Lapointe remains behind bars because our justice system does not like to face up to its errors. And so do other innocent men: most prominently, Ryan Thompson of Plainfield, and George Gould and Ronald Taylor of New Haven. Like the other wrongly convicted in our prisons, they can only dream of being exonerated.

But at least it can be said of Connecticut these days that it is not an impossible dream: not since the Innocence Project was established in our Public Defenders office. The exonerations of James Calvin Tillman, Miguel Roman and Kenneth Ireland in just the last few years should put to rest any thoughts you may have that Connecticut rarely convicts the innocent. There is nothing rare about it. Not here, not anywhere in the U.S. Nationally, the error rate is a conservative five percent, so there are at least 100,000 wrongly convicted individuals in our prison population of 2.3 million. This is the equivalent of one out of every 20 flights taking off from Bradley or LaGuardia going down in flames.

Indeed, the tragedy of the Richard Lapointe incarceration has been made all the more obvious by the recent publication of a Northwestern University Press book, True Stories of False Confessions. Richard may still be locked up after more than two decades yet his case, along with Peter Reilly's, is included in this huge compilation of accounts of men and women convicted of crimes they did not do because of coerced false confessions.

That public forum for Lapointe back in 1995 did Connecticut proud: it was the nation's first-ever major gathering centered on interrogation issues. The late Arthur Miller was

the most notable of the speakers at that event. The Roxbury playwright was, of course, the author of The Crucible, the story of the Salem executions of multiple suspects three centuries ago for crimes that never happened. Arthur spoke some words that I endorse entirely: "I would like to protect the police, even from themselves. We need them. We need their principled upholding of the law, and possibly the quickest and easiest way of protecting the police is to require that interrogations be recorded, even videotaped, so that a disinterested observer can know what actually transcribed."

That pretty much says it all. Miller had been the key figure in the saving of Peter Reilly back in the mid-1970s. The State Police, at that time very much in advance of the rest of the country, had audio-recorded the many hours of the Reilly interrogation, and it was the existence of the tape and its transcript that triggered all the events leading to the teenager's exoneration. The State Police thereafter adopted the unofficial policy of NOT recording suspect "interviews." This went on for a quarter century. Sure, the State Police are now participating in the unnecessary "pilot program" now underway, but these are baby steps to avoid the mandatory recording called for in Raised Bill 230.

The arguments favoring interrogation recording are overwhelming, and the objections insulting to common sense. Twelve states and the District of Columbia, with New Jersey the most recent, have learned that this is good for justice and a great way to cut costs—because of fewer trials and no million dollar lawsuits by those forced to falsely confess.

Similarly, Raised Bill 523 is good for law enforcement because it helps guarantee the reliability of eyewitness testimony. I could spend a few hours just relating the horror stories of innocent suspects convicted not just because the cops had inadvertently or intentionally encouraged faulty eyewitness testimony but because even sincere and well-meaning eyewitnesses to a crime, known as "honest liars," will speak with great confidence about the identity of a suspect even if he is short instead of tall, thin instead of fat, and black instead of white. Memories of what people see can be so contaminated by subsequent events that the only reliable thing to be said about memory is that it is unreliable. The reforms in this bill will go a long way to help the police get it right.

As for Raised Bill 5445, on the death penalty, it is clear that a lot of heavy lifting has been done by a lot of good people to find ways to address the blatant unfairness of the process used by Connecticut to send people to death row. So, for the most part, I support the bill even if it amounts to just tinkering with the machinery of death. We do this tinkering even though we know the inevitability that this state, along with all of the remaining death-penalty states, will abandon capital punishment one fine day and so become better qualified to be part of Western civilization.

As for the question, *What's wrong with us?* I would hope the answer is obvious. Legislators should not walk in lockstep. For 15 years I have watched this committee going in circles, usually going nowhere, about reforms that are the right thing to do even if opposed by law enforcement officials wedded to the status quo. Enough courage by enough of you would make all the difference.